

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:99-00012-03

ERIC DEWAYNE SPENCER

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's "motion to modify fine based on defendant Spencer's ability to pay." (Doc. # 1211). In his motion, defendant asks the court "to remove his fine based on changed circumstances and an inability to pay." For the reasons discussed below, that motion is DENIED.

18 U.S.C. § 3573 permits a court, upon motion of the government, to remit all or part of an unpaid fine. The statute does not, however, permit a court to remit a fine upon motion of the defendant. See United States v. Benally, 2009 WL 1286014, *1 (D. Ariz. 2009); Manjarres v. United States, 2008 WL 842415 (D.R.I. 2008); United States v. Jupiter, 2001 WL 34790221, *1 (W.D. Va. 2001). As such, the motion to remit must be denied.

18 U.S.C. § 3572(d)(3) provides that

A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

Section 3572 does not allow a court to reduce the amount of a fine, only to modify the amount and schedule of the payments.

Based upon the input of the Probation Office which conducted an investigation into defendant's financial situation, defendant is to repay his fine in monthly installments of \$40, such payments to commence in September 2012.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of defendant, the government, and the Probation Office of this court.

IT IS SO ORDERED this 7th day of September, 2012.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge